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January 15, 1999

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Mr. Donald S. Greenberg, Esq.
Assistant County Counsel
County of Ventura
800 South Victoria Avenue
Ventura, CA 93009

In Re: Change in Ownership: Section 61(c) Conclusive Presumption - Transfers of Leased Land by Homeowner/Lessee, with or without a Homeowner's Exemption.

Dear Mr. Greenberg:

This is in response to your letter of July 14, 1998, in which you request our opinion and further analysis in response to our letter to Mr. dated January 24, 1997, regarding the timing of changes in ownership by homeowner/lessees who purchased residences on leased land, and how eligibility for the homeowner's exemption influences the assessor's application of the conclusive presumption under Revenue and Taxation Code Sections 61(c) and 62(g). We apologize for the delay caused by matters beyond our control. Your concern is the proper interpretation of the term, "homes eligible for the homeowners' exemption." Specifically, you wish to know whether the conclusive presumption applies whenever a home "could be" eligible for the exemption, or applies only when a home "is" eligible for exemption, and whether a change in ownership is triggered by the application of the presumption.

In answer to your questions, it has been and continues to be our position that the conclusive presumption applies only when the facts of a particular case indicate that the home is eligible for the homeowners' exemption, and that a change in ownership of the land occurs only where there is a simultaneous transfer by the homeowner/lessee within the meaning of Section 60. Thus, the issue for the assessor's determination is whether a home on leased land is eligible for the homeowners' exemption at the time it is transferred under a Section 60 change in ownership.

Legal Background

Conclusive Presumption under Sections 61 (c) and 62 (g)

The conclusive presumption is an exception under Section 61(c). The primary mandate in Section 61(c) is that a "change in ownership" shall include:

“(1) The creation of a leasehold interest in taxable real property for a term of 35 years or more (including renewal options), the termination of a leasehold interest in taxable real property which had an original term of 35 years or more (including renewal options), and any transfer of a leasehold interest having a remaining term of 35 years or more (including renewal options); or (2) any transfer of a lessor’s interest in taxable real property subject to a lease with a remaining term (including renewal options) of less than 35 years.

Only that portion of a property subject to that lease or transfer shall be considered to have undergone a change of ownership.”

The exception to the foregoing requirement that any leasehold interest of 35 years or more is a change in ownership, is found in the next paragraph under subdivision (c), which states:

“For the purpose of this subdivision, for 1979-80 and each year thereafter, it shall be conclusively presumed that all homes eligible for the homeowners’ exemption, other than manufactured homes located on rented or leased land and subject to taxation pursuant to Part 13 (commencing with Section 5800), that are on leased land have a renewal option of at least 35 years on the lease of that land, whether or not in fact that renewal option exists in any contract or agreement.” (Emphasis added.)

This conclusive presumption is a prerequisite to the exclusion from change in ownership in Section 62(g), which states that change in ownership shall not include:

* * *

“(g) Any transfer of a lessor’s interest in taxable real property subject to a lease with a remaining term (including renewal options) of 35 years or more. For the purpose of this subdivision, for 1979-80 and each year thereafter, it shall be conclusively presumed that all homes eligible for the homeowners’ exemption, other than mobilehomes located on rented or leased land and subject to taxation pursuant to Part 13 (commencing with Section 5800), which are on leased land and have a renewal option of at least 35 years on the lease of that land, whether or not in fact that renewal option exists in any contract or agreement.” (Emphasis added.)

Under the foregoing, it is only where the conclusive presumption applies that the homeowner/lessee can be considered the “fee owner” of the underlying land, regardless of the actual term of the lease. Therefore, when the presumption does not apply, the actual term of the land lease controls the determination of whether the lessee or the lessor is the “owner” of the land. It is important to note however, that the conclusive presumption merely identifies who the *primary owner* of a leasehold interest in land is for assessment

purposes (when the improvement is a single family residence). Standing alone, the presumption does not determine whether or not a change in ownership of the land has occurred. As required by Section 60, a change in ownership means "a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest."

Eligibility for the Homeowners' Exemption and Change in Ownership

As you note, there may be some confusion regarding application of the language of the presumption, because of the use of the term, *eligible for*, i.e., "it shall be conclusively presumed that all homes eligible for the homeowners' exemption." Since the term, *eligible for*, determines the date or time on which the presumption applies, your concern is that a literal interpretation of this term could lead to the absurd result of the homeowner/lessee losing control of the change in ownership consequences of his property, and possibly subjecting the land to reappraisal merely because the *eligibility* of his home for the exemption under Revenue and Taxation Code Section 218 has changed.

Such is not the case however, because aside from the eligibility of the home for exemption, the homeowner/lessee must decide whether and when to lease, purchase, or transfer the home located on leased land. Two separate events must occur in order to lead to reappraisal of such leased land: first, the home has to be eligible for the homeowners' exemption (and the conclusive presumption applies); and secondly, there has to be a *transfer* of the home which meets the change in ownership definition under Section 60 (which in turn causes a change in ownership of the leased land).

Regarding the first event, "home eligible for the homeowners' exemption" is determined from the homeowner/lessee's perspective upon the date of the change in ownership, by applying the Section 218 requirements, e.g., a single-family residence which is the "principal place of residence" of the owner.¹

With regard to the second event, the "transfer" of a home on leased land results in a change in ownership when the three part test under Section 60 is met. As to the leased land, a change in ownership occurs upon the *lessee's* creation, sublease, or termination of a lease with a term of 35 years or more, and upon the *lessor's* transfer or assignment of a lease with a term of 35 years or less. (See Section 61(c) and Rule 462.100(a).) Thus, if the lessee creates, transfers to another, or *terminates* a land lease in which the term is 35 years or more, there is a change in ownership requiring reappraisal of the land subject to that lease. However, under the exclusion in Rule 462,100 (b), if the lessee acquires an interest in, subleases, or terminates a lease for a term less than 35 years, there is no change in ownership regardless of the original term of the lease.

¹The "principal place of residence" requirement is found in subdivisions (a) - (d) of Section 218.

Whatever the lease situation, if there is a transfer of a home on leased land, and if that home is eligible for the homeowner's exemption, the conclusive presumption applies with the result that the land lease is presumed to be for a term of 35 years; and a change in ownership of the land as well as the home occurs upon the lessee's purchase of the home.

No *change in ownership* occurs under Section 60, however, where there is no "transfer" but merely a reduction in the lease term (i.e., from 40 years to 34 years), even though the lessor became the primary owner when the term dropped below 35 years. (See Annotation No. 220.329, enclosed.²) Similarly, where a home on leased land merely becomes eligible for the homeowners' exemption and the conclusive presumption applies (Section 61(c) and 62(g)), there is no change in ownership of the leased property under Section 60, since the homeowner did not purchase or transfer the home, even though the lease term would now (upon eligibility) be presumed to be more than 35 years. Thus, the conclusive presumption related to leased land has no effect on the change in ownership (reappraisal) consequences to the homeowner, unless a Section 60 transfer has occurred.

Applying the foregoing provisions to the hypotheticals you submitted, the answers to your questions are set forth below. Both hypotheticals involve a single family residence located on leased land with the original terms of the leases being less than 35 years or with remaining terms of less than 35 years.

Hypothetical A

Owner leases his home as income property. The home is located on leased land, the term of the lease is less than 35 years. On Day 1, Owner executes a sales agreement with a lease assignment (of the land) to Buyer. Although Buyer (who rents an apartment) wishes to take immediate possession and occupy the dwelling as his principal residence, the current renter has six months remaining on his lease term.

Question 1: Does a change in ownership requiring reappraisal of the land occur upon the sale and assignment of the lease on Day 1?

Answer: No.

² By statute, when the remaining term of a leasehold interest for a term of 35 years or more falls below 35 years as in this case, 34 years, the primary ownership of the leasehold shifts from the lessee to the lessor (for purposes of identifying one primary owner). A change in ownership at this point does not occur, however, because there has been no transfer of the lessor's interest. Without a transfer, the real property cannot undergo a change in ownership. (Annt.220.0329, p.2.)

The facts indicate that the dwelling was income property to the Owner/Seller and would continue to be income property to the Buyer (for six months). Therefore, the dwelling is ineligible for the homeowners' exemption, and the actual term of the lease controls. On Day 1, the sale date, the Buyer becomes the owner and lessor of the home and the lessee of the land subject to a lease with a term of less than 35 years. As to the land, Rule 462.100 (b)(1)(B) provides that the transfer, sublease, or assignment of a leasehold interest in property subject to a lease with a remaining term of less than 35 years, does not constitute a change in ownership.

Reference to the actual term of the land lease is required, since the home was not eligible for the homeowners' exemption on the date of the sale and the conclusive presumption under Sections 61 (c) and 62 (g) did not apply. For purposes of determining change in ownership, the status of Buyer on Day 1 was: (1) a lessee of the land, (2) the owner of the home, and (3) an "unwilling" lessor of the home because he acquiesced to the current renter's remaining six months on the lease of the home and therefore could not make it his principal residence. Per Rule 462.001 (b), "Every transfer of property qualified as a 'change in ownership' shall be so regarded whether the transfer is *voluntary*, *involuntary*, by operation of law, by grant, gift, devise, inheritance, trust, contract of sale, addition or deletion of an owner, property settlement ... or any other means." The assignment of the land lease made by the Seller/lessee to Buyer as the "new lessee" on Day 1 constitutes the transfer of a lessee's interest in land subject to a lease with a remaining term of less than 35 years, which is excluded from change in ownership under Rule 462.100 (b)(1)(B), as noted above.

The answer would be "yes" to reappraisal of the land if the home were eligible for the homeowners' exemption on Day 1, and the conclusive presumption applied. In that case, the actual term of the land lease would be disregarded, and the Buyer/lessee would be "presumed" to have acquired a leasehold interest in land subject to a term of 35 years or more. Under Rule 462.100 (a)(1)(B), the transfer, sublease, or assignment of a leasehold interest with a term of 35 years or more constitutes a change in ownership.

Question 2: Does a change in ownership of the land occur if Buyer moves into the home six months later, and occupies it as his principal residence (on Day 180)?

Answer: No.

As discussed above, because the conclusive presumption does not apply on Day 1, the "transfer" (assignment) of the Seller/lessee's interest in land subject to a lease with an actual remaining term of less than 35 years is excluded from change in ownership. Once the home is "eligible" for the homeowners' exemption (on Day 180) and the conclusive presumption applies, without a Section 60 "transfer" by the Buyer/lessee on Day 180, there is no new change in ownership and reappraisal of the land. The facts do not indicate the existence of a Section 60 transfer on Day 180.

Question 3: Does a change in ownership of the land occur if, during the six months that Buyer was waiting to take possession, the Lessor assigns his rights under the land lease to a third party on Day 60?

Answer: Yes.

Assuming under these facts that the "Lessor" is the owner of the land (not Buyer who is the owner and lessor of the home and lessee of the land) and assuming the home was not eligible for the homeowner's exemption on Day 1, the actual term of the land lease applies rather than the conclusive presumption under Sections 61(c) and 62(g). Since the actual term is less than 35 years, there is a change in ownership of the land on Day 60 under Rule 462.100 (a)(2)(B). Whether to a third party or to the lessee, the transfer is of the "Lessor's interest" in land subject to a lease under 35 years. (See Annotation No. 220.0329, p.6.)

If, four months after the Lessor's transfer to a third party, Buyer occupies the home as his principal residence, making it eligible for the homeowners' exemption, the conclusive presumption would apply, and the land lease would be presumed to have a term of more than 35 years. However, no change in ownership or reappraisal of the land would occur on Day 180, because there is no Section 60 transfer by Buyer/lessee.

Hypothetical B

Owner has a second home (Home 2) without a homeowners' exemption on leased land (for a term of less than 35 years) and a principal residence (Home 1) elsewhere with a homeowners' exemption. On Day 1, Owner executes a sales agreement with a lease assignment (of the land) on Home 2 to Buyer.

Question 1: Does a change in ownership requiring reappraisal of the land occur on Day 1?

Answer: No, if Buyer is also using Home 2 as his secondary home or vacation residence, since the conclusive presumption does not apply.

Yes, if Buyer will be occupying Home 2 as his principal residence, making eligible for the homeowner's exemption and triggering the conclusive presumption.

The reasons are similar to those discussed in the narrative following the answer to Question 1 under Hypothetical A, above.

Question 2: Does change in ownership requiring reappraisal of the land occur, if Buyer purchased Home 2 on Day 1, but waited 15 days before moving in and making it his principal residence?

Answer: Yes - since the home will be Buyer's principal residence, the home is eligible for the homeowner's exemption.

As indicated above, determinative is whether the home is eligible for the homeowners' exemption at the time of the change in ownership. There is no requirement of actual occupancy as of that date or as of a specific date thereafter.

As to the availability of the homeowners' exemption for an assessment on the supplemental roll due to a change in ownership, Section 75.22 provides that a property shall be eligible for exemption "... if the person claiming the exemption meets the qualifications for the exemption ... no later than 90 days after the date of the change in ownership or completion of new construction." Accordingly, if the Buyer claiming the homeowner's exemption meets the qualifications 15 days after the date of the change in ownership, the exemption applies to the supplemental assessment based on that date.

As explained in the latter part of the narrative following the answer to question 1 under Hypothetical A however, the conclusive presumption would apply on Day 1, and the actual term of the land lease would be disregarded with the Buyer "presumed" to be a lessee for a term of 35 years or more. Under Rule 462.100 (a)(1)(B), the transfer, sublease, or assignment of a leasehold interest with a term of 35 years or more constitutes a change in ownership.

Question 3: Does a change in ownership and reappraisal of the land occur if on Day 50, Lessor of the land assigns his rights under the land lease to a third party?

Answer: No - if Buyer will be occupying Home 2 as his principal residence, making it eligible for the homeowners' exemption and triggering the conclusive presumption.

Yes - if Home 2 will not be eligible for the homeowners' exemption and the actual term of the land lease applies

Assuming that the "Lessor" is the owner of the land (not Buyer who is the owner and lessor of the home and lessee of the land), and assuming that the home sold to Buyer was eligible for the homeowner's exemption on Day 1, the term of the lease is presumed to be 35 years or more under the conclusive presumption of Sections 61(c) and 62(g). Thus, the assignment of the "lessor's" interest in a lease for a term of more than 35 years does not constitute a change in ownership, whether the assignment is to the lessee or to a third party. (Rule 462.100 (b)(2)(A).)

If, on the other hand, the home sold to Buyer was not eligible for the homeowner's exemption as of Day 1, then the actual term of the land lease applies, rather than the conclusive presumption. Since the actual term is less than 35 years, there is a change in ownership and

reappraisal of the land, when, on Day 50, the Lessor transfers his rights under the lease to a third party, per Rule 462.100 (a)(2)(A).

Question 4: Does a change in ownership and reappraisal of the land occur if, two years later (Day 780), Buyer acquires a new principal residence elsewhere and converts this home to a rental?

Answer: No - the conclusive presumption ceases to apply on Day 780, and there is no assignment or sublease of Buyer's interest in the land lease.

Buyer's home was eligible for the homeowner's exemption on Day 1, but on Day 780, the home became ineligible since he established his principal residence elsewhere. If on Day 780, Buyer rents the home to a tenant, the conclusive presumption under Sections 61(c) and 62(g) no longer applies, and the actual term of the land lease again controls. There is, however, no assignment or sublease of Buyer's interest in the land lease.

It is important to note here that change in ownership and reappraisal occur only upon the assignment or sublease of the land. The mere passage of time or ineligibility for the homeowners' exemption, which removes the application of the conclusive presumption and forces the assessor to rely on the actual term of the lease (from more than 35 years to less than 35 years), does not result in reappraisal without a "transfer" that constitutes a change in ownership under Section 60.

Question 5: Does a change in ownership and reappraisal of the land occur if, two and a half years later (Day 900), Buyer sells the home and assigns the land lease?

Answer: Yes - if "New Buyer" will be occupying the home as his principal residence, making it eligible for the homeowners' exemption and triggering the conclusive presumption.

No - if the home is not eligible for the homeowners' exemption on Day 900 and the actual term of the land lease applies.

The reasons are similar to those discussed in the narrative following the answer to Question 1 under Hypothetical A. The answer would be "yes" to reappraisal of the land, if the home were eligible for the homeowners' exemption on Day 900 and the conclusive presumption applied. In that case, the actual term of the land lease would be disregarded, and the New Buyer/lessee would be "presumed" to have acquired a leasehold interest in land subject to a term of 35 years or more. Under Rule 462.100 (a)(1)(B), the lessee's transfer, sublease, or assignment of a leasehold interest with a term of 35 years or more constitutes a change in ownership.

The answer would be "no" to reappraisal of the land if the conclusive presumption under Sections 61 (c) and 62 (g) did not apply. If the home was not eligible for the homeowners'

exemption on Day 900, the assessor would refer to the actual term of the land lease. Since the lease has a remaining term of less than 35 years, the Buyer/lessee's assignment of his interest in the land to New Buyer would be excluded from change in ownership under Rule 462.100 (b)(1)(B).

The views expressed in this letter are, of course, advisory only and are not binding on the county assessor or on the assessment appeals board of any county. They represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely,



Kristine Cazadd
Senior Tax Counsel

KEC:lg
precednt/transbyv/99/01kec

Attachments: Annotation No. 220.0329, LTA No. 82/50

cc: The Honorable Dan Goodwin
Ventura County Assessor

Mr. Richard Johnson, MIC:63
Mr. David Gau, MIC:64
Ms. Jennifer Willis, MIC